

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/05-01/08

Date: 5 March 2012

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
THE PROSECUTOR
v. Jean-Pierre Bemba Gombo**

Confidential and Ex Parte Defence only

**Defence observations pursuant to the Chamber's order postponing the status
conference**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Counsel for the Defence

Mr Aimé Kilolo-Musamba

Mr Peter Haynes

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

Applicants

(Participation/Reparation)

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

A. BACKGROUND

1. On 22 February 2012, Trial Chamber III (“the Chamber”) informed the parties by way of an email that a status conference had been scheduled for 28 February 2012.

2. Given that this scheduling would have prevented the Defence from seeking full and proper instructions from the accused, coupled with the ongoing scheduling difficulties and uncertainty surrounding the testimony of Prosecution Witness 36, the Chamber rendered *its Order postponing a status conference and on issues related to the presentation of evidence by the defence* (“Order”), in which it postponed the status conference until the week of 12 March 2012.¹ The Chamber also ordered that Defence respond in writing to the issues set out below by 5 March 2012.² Pursuant to that Order, the Defence files the following observations.

B. EX PARTE FILING AND STATUS CONFERENCE

3. As anticipated by the Chamber in its Order,³ the Defence submits the current filing as *ex parte* and confidential.

4. Regulation 23 *bis* (1) of the Regulations of the Court provides that “any document filed by the Registrar or a participant and marked “*ex parte*”, “under seal” or “confidential”, shall state the factual and legal basis for the chosen classification and, unless otherwise ordered by a Chamber, shall be treated according to that classification throughout the proceedings.”

5. The Defence notes that it is being asked to make submissions on issues which are directly relevant to defence strategy; most notably whether it intends to present any evidence at all. The Defence is also being asked to provide details as to whether,

¹ ICC-01/05-01/08-2145, para. 4.

² ICC-01/05-01/08-2145, para. 5.

³ ICC-01/05-01/08-2145, para. 5.

for example it will call expert witnesses, and if the accused will testify in his own defence. At this stage, the Defence notes that it is under no obligation to reveal this information to the Prosecution or Legal Representatives for Victims. Nor is the Defence obliged to disclose information as to the current state of its ongoing investigations.

6. The Defence also notes that the Prosecution has not yet concluded the presentation of its case, and the Chamber has authorised the presentation of evidence by the Legal Representatives for Victims. As such, the information below is subject to change once the accused is in possession of all the evidence presented in support in the allegations against him.

7. In such circumstances, the Defence respectfully submits that the *ex parte* filing of such information is justified, particularly in light of the ongoing right of the accused to remain silent. The Defence also notes that, in terms of Prosecution preparation, the Defence has been consistent throughout the presentation of the Prosecution evidence in putting its case to Prosecution witnesses, and being clear as to which aspects of the Prosecution allegations are in dispute.

8. Given the *ex parte* nature of this information, the Defence also requests that insofar as the status conference will discuss any of the points raised below, that it also be held *ex parte*.

C. SUBMISSIONS

(a) The estimated amount of time required by the defence to prepare its presentation of evidence

9. At this stage, the Defence anticipates being able to start the presentation of its evidence on 1 July 2012.

(b) The stage reached by the defence in its investigations

10. The Defence anticipates spending the remainder of March and the majority of April 2012 conducting ongoing investigations.

(c) The anticipated number of witnesses to be called by the defence

11. The Defence anticipates calling approximately 40 witnesses.

(d) A preliminary estimate of the amount of time needed for the *presentation of its evidence by the defence, including an estimate of the *time needed for questioning

12. The Defence anticipates, as a preliminary estimate, that the time taken to present to present its 40 witnesses would mirror that taken by the Prosecution to present its case. This estimate takes into account an approximation of the time needed for questioning of witnesses by the Defence, Prosecution, Legal Representatives for Victims, and the Chamber, as well as periods of scheduled judicial recess.

(e) Whether protective measures may be required for the witnesses to be called by the defence.

13. The Defence anticipates that approximately half of its witnesses will require protective measures.

(f) Whether the defence intends to call expert witnesses

14. At this stage, the Defence anticipates calling expert witnesses.

(g) Whether, on a preliminary basis, a decision has been made as to whether the accused will testify

15. It is currently the intention of the Defence to call Mr. Bemba as a witness in his own defence.

(h) The reclassification of the defence's "Filing on Preliminary Information on the Defence Case" of 14 December 2011 (filing ICC-01/05-01/08- 2005-Conf-Exp)

16. The Defence does not consent to the re-classification of filing ICC-01/05-01/08-2005-Conf-Exp, as the reasons given for the original classification remain.

(i) Any other matters the defence wishes to be discussed at the status conference on the scheduling and preparation of the presentation of evidence by the defence.

17. The Defence is grateful for the opportunity to inform the Chamber that a significant percentage of proposed Defence witnesses are part of the armed forces of the Democratic Republic of the Congo, and who may consequently need authorization to testify before the Chamber.

18. The Defence also anticipates that many Central African witnesses who are currently living outside of the Central African Republic will have difficulties obtaining a passport. The Defence anticipates that these witnesses will need to be provided with a "laissez-passer" and safe passage in order to facilitate their testimony.

19. As far as these issues may have an impact on scheduling, the Defence takes this opportunity to raise them with the Chamber.

THE WHOLE respectfully submitted.

A handwritten signature in blue ink, consisting of a stylized 'A' followed by 'K' and 'M'.

Aimé Kilolo Musamba
Co-Lead Counsel

Done on the 5th of March 2012

At The Hague, the Netherlands